

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 34
CASE NUMBER:	SUIT NO. FCT/HC/CV/240/19
DATE:	3rd JANUARY, 2020

BETWEEN:

AGUNECHIBE BENSON.....CLAIMANT

AND

THE DIRECTOR OF COOPERATIVE FCT & 5 ORS.....DEFENDANT

APPEARANCE

Patience Kunli Esq, for the Plaintiff.
Ifeyanyi Okaro Esq for the 1st -6th Respondents.

RULING

By amended originating motion brought pursuant to order 42 Rule 5 (1) and (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2004 and under the inherent Jurisdiction of this Honourable Court.

The applicant herein prayed this Honourable Court for the following reliefs:-

- (1) An order of certiorari to remove for the purpose of being quashed the proceedings and decision of the dispute resolution panel headed by the Director of cooperative societies, wherein the award of the said Sum of three million four Hundred and Eighty-one Thousand Nine Hundred and four Naira, one Kobo (₦3,481,904,01k) was made in favour of the 3rd Respondent against the Applicant.
- (2) An order quashing the said proceedings in relief I above.
- (3) An order of this Honourable Court setting aside the execution levied by the 5th Respondent against the Applicant, pursuant to the registration and enforcement of the award of the said sum of three million four Hundred and Eighty-one Thousand, Nine Hundred and Eighty-one Thousand Nine Hundred and four Naira, one Kobo (₦3,481,904.01K) to the 3rd Respondent as contained in the writ of attachment with form No. CV-16-2016 and dated the 5th day of October, 2016.
- (4) And for such order or further order (s) as this Honourable Court may deem fit to make in the circumstances.

In support of the motion is a 30 paragraphed affidavit deposed to by Mr. Aguneechibe Benson, the applicant himself. Attached to the affidavit are annexures marked as Exhibits A to F respectively. Equally filed is a statement in support wherein the name and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought are contained. Also, a written address in support was filed.

Counsel to the Applicant H. A umar Esq while moving the motion adopted the written address as their submission and urged the court to grant the reliefs. In the said written address counsel formulated a lone issue for determination which is whether on the facts and circumstances contained in the supporting affidavit and the exhibits attached, the Applicant is entitled to the grant of this application.

In arguing the issue, counsel submitted that the law is trite that no matter how correct a decision, whether of an administrative body acting in a quasi-judicial capacity or a court, if same is done in breach of fair hearing such proceedings/decision is a nullity and goes to no effect whatever. Reliance was

placed on the cases of FBN VS TSA IND. LTD (2010) 4-7 SC; MONTERTY NIGERIA LTDVS SINDENG NIGERIA LTD (2012) LPELR-19767 AND ADENIRAN VS NATIONAL ELECTRIC POWER AUTHORITY (2012) 47 WRN 145.

The learned further referred the court to paragraphs 6-12 of the supporting affidavit and submitted that the right to fair hearing of the Applicant at the proceedings which led to the award of the sum of three million four Hundred and Eighty-one Thousand Nine Hundred and four Naira. One Kobo (~~₦~~3,481,904.01k), in favour of the 3rd Respondent against the Applicant by the 1st Respondent was done in gross violation of the Constitutional right of the Applicant to fair hearing and the proceedings and decision so reached as affecting the Applicant are therefore, null, void and of no effect what so ever.

In the circumstances counsel urged the court to so hold and quash the proceedings and decision of the 1st Respondent wherein the 3rd Respondent was awarded the Sum of three million, four Hundred and Eighty-one Thousand Nine Hundred and four Naira, one Kobo (~~₦~~3,481, 904.01K), in favour of the 3rd Respondent against the Applicant. Counsel cited Section 49 (1) (2) (3) (a) (5) & (6) of the Nigeria Cooperative societies Act. And Section 36 (1) of the 1999 Constitution (As Amended).

In his further submission, counsel stated that the proceedings before the 1st Respondent leading to the enforcement and attachment of the Applicant's properties by the 6th Respondent on the 5th day of October, 2016 was conducted in gross violation of the Applicant's right to fair hearing and as such the said proceeding are null, void and of no effect whatsoever and therefore liable to be removed and quashed by this Honourable Court and urged the Court to so hold and quash the said proceeding. Counsel referred the court to Exhibit E attached to the supporting affidavit.

Moreso, counsel cited the case of A. C. B PLC VS NWAIGWE (2011) NWLR Pt. 1246) 380 and Section 49 (6) of the Nigeria Cooperative Societies Act, 1993 CAP N98 LFN 2004 as well as paragraphs 6-15 of the supporting affidavit and submitted that the Applicant is entitled to the grant of the instant application and

urged the court to so hold. Reference was also made to the case of MACFOY VS UAC LTD (1961) 3 ALL E.R 1169 at 1172.

On ground (ii) of the Applicant's supporting statement, counsel submitted that when an action is pending in court, none of the parties or any other person should treat the subject matter of the Suit in such a way that usurps or takes away or renders nugatory, the powers of the court to exclusively adjudicate over the subject matter of the suit. In support counsel cited the case of OLUSI & ANOR VS OBAMOBI & ORS (2014) LPELR-22089 (C A).

In a similar vein, counsel referred the court to paragraphs 20 and 25 as well as Exhibit E and F and submitted that the entire proceedings purportedly conducted by the 1st and 2nd Respondents and the purported decision made against the Applicant in favour of the 3rd Respondent was contemptuous of the majesty and powers of both the upper Area Court Kwali and the upper Area Court Abaji and as such, the said purported arbitral decision of the 1st and 2nd Respondents is sub judice and therefore liable to be quashed and all acts pursuant to the said decision are therefore null and void.

In this regard counsel urged the court to so hold and quash the said arbitral decision and set aside the execution/attachment and auction of the Applicant's properties contained on the face of the motion.

Finally, counsel submitted that the Applicant is entitled to all the reliefs sought in this application and urged the court to so hold and grant the instant Application.

In opposing the motion 1st to 6th Respondents filed a counter affidavit of 31 paragraphs deposed to by one Mr. Ayuba Nuku Shekwanyie, the 2nd Respondent herein. Attached to the counter affidavit are annexures marked as Exhibit A1 to A12 respectively. Also filed is 1st-6th respondents written address dated the 18th day of October, 2017.

Addressing the court on 9th December, 2019, learned counsel to the 1st-6th Respondents submitted that the said ground upon which the amended motion was brought is in breach of order 42 Rule 6 (2) of the 2004 Rules. That the said

ground two raises an issue or new matters which do not arise out of the affidavit of any party to this suit and urged the court to discountenance the said ground two.

Therefore, in the said written address learned counsel to the 1st-6th Respondents formulated two issues for determination as follows:-

- (1) Whether or not the applicant has sufficiently made out a case for a breach of his right to fair hearing.
- (2) Whether or not the applicant is entitled to the reliefs before the court.

The learned counsel stated that the two issues will be argued together. Therefore, in arguing the issues counsel submitted that a hearing can only be said to be fair when all the parties to the dispute are given a hearing or an opportunity of hearing and if one of the parties is refused or denied a hearing or is not given an opportunity of being heard, such hearing cannot qualify as a hearing under the audi alterem partem rule. Reference was made to the case of DARMA VS OCEANIC BANK PLC (2004) WRN 133 at 137.

In another submission, counsel stated that the right to fair hearing is to be determined by the impression of a reasonable person who was present at the trial, whether from his observation justice has been done in the case. In this respect counsel cited the case of AMACHUKWU VS FRN (2010) 1 WRN 16 at 28 Ratio 2.

Also, counsel submitted that in the settlement of disputes under part viv of the Nigeria cooperative societies Act, 2004, the arbiter or director is not bound by direct rule of procedures and evidence. And that Section 55 (2) of the said Act also provides that the provision of the Arbitration and conciliation Act shall not apply to any matter referred to an arbitrator under the provisions of the Nigeria Cooperative societies Act. That what is essential is that the parties to the dispute are given ample opportunity to present their case.

In the circumstances, counsel referred the court to paragraphs 11 to 18 of the counter affidavit and the Exhibits thereto particularly Exhibits A7, A8 and A9 and

submitted that the Applicant was awarded ample opportunity to present his case and he freely and fully utilized the opportunity to his advantage.

It was the submission of the learned counsel again that the test of fair hearing is objective and the opinion of a reasonable person formed from his observation of the proceedings if justice was done. And that it is a sufficient satisfaction of the principle if parties were afforded an equal opportunity without any inhibition to put across their case. Reliance was placed on the cases of ZABOLE INT'L LTD VS OMOGHEHIN (2005) 46 WRN page 103 at 112 Ratio 9; PAM VS MOHAMMED (2008) 40 WRN 67 at 75-76.

In this respect counsel stated that in the instant case, the Applicant fully participated in the proceedings and presented his case without let or hindrance. Counsel referred the court to paragraphs 12, 13, 14, and 19 of the counter affidavit and particularly Exhibits A3, A4, A5, A6., A7, A8,A9 and A12 thereto. And the cases of NEWS WATCH COMM. LTD VS ATTA (2006) 34 WRN page 1 at page 8 Ratio 7; INAKOJO VS ADELEKE (2008) WRN 1 AT 168 paragraph 4.

Further, counsel urged the court to hold that on the facts and circumstances of this case that the allegation by the applicant in paragraphs 9 to 13 of the affidavit in support of the amended originating motion to the effect that he was not notified of any proceedings nor participated in any, is totally without foundation. counsel referred the court to the cases of M. M. S LTD VS OTEJU (2006) 40 WRN 182 at 191-192 ratio 8, MAIKYO VS ITODO (2007) 29 WRN 1 at 6 Ratio 6 as well as Exhibit A12 accordingly.

It was the learned counsel's contention that the applicant having taken advantage of the atmosphere and environment for a fair hearing created by the 1st and 2nd Respondents cannot turn around to accuse them of denying him of fair hearing, that this will amount to a mockery of the principle of fair hearing. As such counsel urged the court to so hold.

On the second ground upon which this application was brought, counsel submitted that this court has moved from the regime or domain of doing technical justice to the regime or domain of doing substantial justice that the

applicant has failed to show how the question raised in ground (ii) of the applicant's supporting statement has occasioned miscarriage of justice. Reference was again made to the case of INAKOJO VS ADELEKE (Supra) at page 174, lines 25-30.

In another submission, counsel stated that the applicant without objection voluntarily submitted to the jurisdiction of the arbitration panel under Section 49 of the Nigerian cooperative Societies Act and actually participated in the proceedings that gave rise to the decision complained of. Counsel referred the court to paragraph 23 of the counter affidavit and Exhibits A3, A4, A5, A7, A8, A9 and A12 of the Counter Affidavit.

The learned counsel further submitted that the equitable defence of acquiescence laches and standing-by avail the respondents and counsel referred the court to paragraphs 19-26 of the affidavit in support of the amended originating motion and stated that its established that the applicant was aware of the pendency of the two court cases but went ahead to participate in the arbitration proceedings without any objection or protest. In support, counsel cited the case of OKEREKE VS NWANKWO (2003) WRN 88 at 97 Ratio 8.

In addition, counsel stated that assuming without conceding that the complaint of the applicant amounts to an irregularity, he submitted that the irregularity did not occasion any miscarriage of justice and so cannot vitiate the proceedings/decision of the 1st and 2nd Respondents. Counsel referred the court to Section 49 of the Nigerian Cooperative Societies Act, 2004 and the case of ARUM VS NWOBODO (2013) 4 SCNJ 213 at 219, Ratio 1.

In this respect, counsel urged the court to hold that the complaint of the applicant did not amount to any miscarriage of Justice.

In another line of submission, counsel stated that an order of certiorari is not granted where there has been undue delay in making the application and that the applicant is not in compliance with the relevant rules of court as same was not brought within the limitation period of three months as provided by the rules of this court. Counsel referred the court to order 42 rule 4 (1) (b) and (2) of the Rules

of this court and the cases of UWAZUIKE VS A. G FEDERATION (2007) 14 WRN 112 at 118; PRINCE ASIRU MARADESA VS MILITARY GOVERNMENT OYO STATE & ANOR (1986) 4 C. A (PT. 1) 475.

Again, counsel submitted that this application is an abuse of court process having been overtaken by events and same is belated as there is no decision of the 1st and/or 2nd Respondents capable of being quashed. That the decision being complained of has since been registered as a judgment of court in CV/61/2016 and same was enforced on 5th October, 2016 and the properties in question sold by order of court. Counsel referred the court to Section 44 (5) of the Nigeria cooperative societies Act, LFN 2004.

To this end, counsel submitted that it is trite law that courts are enjoined not make an order in vain, such order will serve no useful purpose even where made as such acts are executed acts. Counsel stated further that in the instant case, the applicant's attached properties had been auctioned by order of court. Reference was made again to the case of INAKOJO VS ADELEKE (Supra) page 175 lines 25-30.

Finally, counsel submitted that the burden is on the applicant to show that his right to fair hearing was breached and that the applicant has not placed any material in support of his assertions or allegations, as he who asserts must prove. Reliance was placed on Section 131(1) Evidence Act, 2011. Consequently, counsel submitted that the applicant having failed to make out a case for breach of his right to fair hearing is not entitled to the reliefs sought and urged the court to refuse the application and dismiss same with substantial cost as same is lacking in merit and devoid of substance.

I have carefully perused the amended originating motion, the reliefs sought, the supporting affidavit, the annexures attached therewith and the written address in support. I have also gone through the counter affidavit in opposition to the motion, the annexures attached therewith and the written address. Having done this, it is my humble view that the issue for determination is whether from the affidavit evidence before the court, the applicant is entitled to the reliefs sought.

It is pertinent to begin by stating that the applicant is seeking for and order of certiorari. Therefore, this application has brought to the fore the powers of a High Court to examine by way of review the finding or otherwise of a lower court or/tribunal and in the instant case, for the purpose of quashing the proceedings and decision of the dispute resolution panel headed by the Director of the Cooperative Societies wherein the award of the Sum of three million, Four Hundred and Eighty one Thousand, Nine Hundred and Four Naira, One Kobo (₦3, 481, 904. 01K) was made on favour of the 3rd respondent against the Applicant.

It is trite law that the whole object or essence of certiorari. Is to enable the court (High Court) to examine the proceedings in the inferior court or tribunal to see whether its orders has been made within its jurisdiction. In this respect, see the case of ONYEKWULUJE VS BENUE STATE GOVERNMENT (2005) 8 NWLR (PT. 928) 614 at 636, paragraph c-D where it was held thus:-

“.....Now it is settled, that most important function of certiorari, is that by it in the exercise of the supervisory role of the High Court over inferior courts judgment, orders on other proceedings of civil or criminal, made without or in excess of jurisdiction may be renewed to the High Court, to be quashed.”

See also the case of EGBERENBA VS ER. CO (2110) 9 NWLR (PT. 1199) 411.

Further more on when order of certiorari will lie, it was further held in ONYEKWULEGE VS BENUE STATE GOVERNMENT(SUPRA) at page 647-648 paragraphs A-B thus:-

“.....Courts having supervisory jurisdiction can issue or grant order of certiorari on inferior courts where the latter acted in any of the under mentioned situations namely:-

(a) Where the inferior court or tribunal lacks jurisdiction, or.

(b) Where from the face of the record of the lower/inferior court/tribunal there appears to be an error of law. Or

(c) There appears to be fraud or collusion, or

(d) Where apparently there appears to be breach of rules of natural justice committed or likely to be committed by the inferior court or tribunal.”

Therefore, in the instant case, the major ground upon which this application was predicated upon by the applicant is lack of fair hearing. In other words, the applicant alleged that his right to fair hearing was denied by the dispute resolution panel. In that respect, it is worthy of note that the right to be heard is a fundamental and indispensable requirement of a valid judicial decision. Where a party should be heard and he is denied the right to be heard, a decision taken in such proceeding will be invalid. See the case of T. & E (NIG) LTD VS INTERGRITY CONCEPTS LTD (2012) 2 NWLR (PT. 1283) 120.

Moreso, it is settled law that the effect of breach of the right to fair hearing goes to nullify the entire proceedings of a court or tribunal. In support of this, see the case of ISHAKU VS KANTIOK (2012) 7 NWLR (PT. 1300) 475 at 503, paragraph B-C where it was held thus:-

“...It is well established that a court or tribunal should not be seen to have barred a party from conducting his case as he wants or filing his defence in the case. It is trite that where a party’s right to fair hearing is breached, the entire proceedings are a nullity and it will be irrelevant that the decision arrived at the court or tribunal is correct or not”.

Having stated this, the onus is on the applicant to establish or prove with credible evidence that his right to fair hearing was breached by the dispute resolution panel in line with the settled principle of law that he who asserts must prove. See Section 131 (1) of the Evidence Act 2011. The Section provides thus:-

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”.

The applicant herein stated in the supporting affidavit particularly at paragraphs 8, 9, 10, and 12 to the effect that the 1st and 2nd Respondents never notified him nor made him a party to any proceeding of a panel set up which the 1st Respondent headed and made a decision awarding the said sum of three million four Hundred and Eighty One Thousand, Nine Hundred and Four Naira, One Kobo (₦3, 481, 904.01K) in favour of the 3rd Respondent against him

(applicant). And that, he has never participated in the proceedings to enable him put forth his defence to whatever allegation/claims made against him by the 3rd-5th Respondents or any other officials/members of the 3rd Respondent.

However, the 1st-6th respondents stated in their counter affidavit particularly at paragraphs 10, 11, 12,13 and 14 that the applicant was personally present and fully, freely and ably presented his case to the dispute resolution panel. The 1st to the 6th Respondents attached among other Exhibits A3, A4, A5, A6, A7, A8 and A9 respectively.

In the light of the above, an X-ray of Exhibits A3, A4 and A5 which were titled **"ATTENDANCE"** attached to the counter affidavit will show clearly that the applicant's name and signature appeared in all the said Exhibits which indicate that the Applicant participated at the meeting/proceedings of the dispute resolution panel and there's no evidence before the court where the applicant denied or alleges fraud in the said Exhibits A3, A4, and A5 challenging either his name or signature therein. In that regard, it is settled law that oral averments in form of affidavit cannot be admitted to vary and or add to the contents of a document. In support of this, see the case of ANYANWU & ORS VS UZOWUAKA & ORS (2009) LPELR-515 (SC) at page 24-25, paragraphs G-H where Supreme Court held thus:-

"It is my respected view that piece of evidence ought not to be have been admitted and acted upon as it goes to no issue, the settled principle of law being that oral evidence cannot be allowed to add to vary or contradict the contents of a document except where fraud in the making of the document is alleged".

In addition it is equally settled law that a documents speaks for itself. See the case of AIKI VS IDOWU (2006) 9 NWLR (PT. 984) 47 at 65 paragraph A-C where court of Appeal held that:-

"Documents when tendered and admitted in court are like words uttered and do speak for themselves".

From the foregoing, it is apparent and without doubt that the applicant has in my considered opinion participated in the proceedings of the said dispute resolution panel and presented his case accordingly which necessitated the applicant to author Exhibit A12. For clarity, I will reproduce here paragraph 1 of the said Exhibit A12 for ease of reference.

The paragraph reads in part thus:-

“You will recall that sometimes February, 2014 I and some few Exco’s of the Igbo multi-purpose cooperative society Abaji-Abuja had a meeting with your representative at Abuja Area Council Secretariat to deliberate on this subject matter i.e re-payment of the sum of ₦5,940,000.00 as the outstanding balance of my loan. In this meeting, I made it very clear to your representative that.....”

In the circumstances therefore, I am of the firm opinion that the Applicant having participated at the dispute resolution panel proceedings and presented his case, his allegation that his right to fair hearing was denied has no basis. I so hold.

To this end, I must add quickly that I do not intend to dissipate my energy dwelling on the second ground upon which this application was brought reason being that I align myself with the submissions of the learned counsel to the 1st -6th Respondents and add that the Applicant who has participated at the dispute resolution panel did not inform or challenge the panel on the ground that there is a pending suit on the subject matter, cannot now turn around and challenge the decision of the said panel. I so hold.

In that regard, I hold very strongly that the applicant based on the affidavit evidence before the court has failed to establish or prove that his right to fair hearing has been denied or breached by the said panel and as such I hereby resolved the sole issue for determination in favour of the Respondents against the Applicant.

On that note and without much ado, I hereby hold that this application lacks merit and same is dismissed in its entirety. I make no order as to cost.

Signed

Hon. Justice Samirah Umar Bature

15/01/2020

Respondent's Counsel: We want to thank my Lord for this well researched and erudite Ruling.

Applicant's Counsel: We are grateful.